

THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER
CIVIL MISCELLANEOUS APPEAL No.4778 OF 2004

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short, 'the Act') aggrieved by the order dated 03.08.2004 passed in O.P. No.233 of 2000 on the file of the Chairman, Motor Accident Claims Tribunal-cum- I Additional District Judge, Nizamabad (for short, 'the Tribunal'), whereby the Tribunal though assessed compensation payable to the appellant-petitioner as Rs.31,000/-, granted Rs.26,000/- by deducting Rs.5,000/- therefrom holding that the appellant-petitioner also contributed for occurrence of the accident, as he was not holding driving licence to drive the motorcycle.

2. For the sake of convenience, the parties hereinafter referred to as they were arrayed before the Tribunal in the original petition.

3. Heard the learned counsel for the appellant-petitioner and perused the material available on record. There is no representation on behalf of the 2nd respondent-insurer. The appeal against the 1st respondent-owner of the offending vehicle is dismissed for default vide the order dated 13.10.2017. However, dismissal of the appeal for default against the 1st respondent-owner of the offending vehicle is of no consequence to decide the quantum of compensation, in view of the decision of a Division Bench of this Court in **Meka Chakra Rao v. Yelubandi Babu Rao @ Reddemma and others**¹, wherein it is held that:

"If the Claims Tribunal records a finding that the accident had taken place due to the rash or negligent driving of the driver of the motor vehicle and if such finding is not challenged either by the Insurance Company or by the owner of the motor vehicle, the question that arises in appeal filed against the orders of the Tribunal by the claimants is only with regard to the determination of just, fair and reasonable quantum of compensation and therefore there cannot be any bar to decide the

¹ 2001(1) ALT 495 (D.B.)

quantum of compensation against the Insurance Company even in the absence of owner of the vehicle to the extent of the statutory liability of the Insurance Company. But the quantum of compensation cannot be decided over and above the statutory liability of the Insurance Company in the absence of the owners, but the question of the statutory liability of the Insurance Company survives for consideration at the appellate stage."

4. Brief facts of the case are that on 23.12.1999, the petitioner was going by his Suzuki motorcycle bearing registration No.AP 25D 4668 from Bodhan towards Narsi and at about 1-30 p.m., when he reached near a Dhaba, a van bearing registration No.MH 26C 4761 driven by its driver in a rash and negligent manner at high speed came from opposite direction and dashed against the motorcycle of the petitioner, due to which the motorcycle fell down and the front wheel of the van ran over the petitioner. As a result of which, the petitioner received injury on the head, fracture to skull and his left ear was cut off and separated. The petitioner also received fracture to left leg and injuries all over the body. The petitioner was admitted in Government Hospital, Bodhan and later referred to Gandhi Hospital, Secunderabad, where his left leg was operated and rod was inserted and he spent huge amount towards treatment. The Station House Officer, Bodhan Police Station registered a case in Crime No.314 of 1999 for the offence under Section 338 I.P.C. against the driver of the van.

5. Respondent Nos.1 and 2-owner and insurer of the crime vehicle filed separate counters denying all the averments made in the petition. The 2nd respondent-insurer specifically contended that the claim of the petitioner is highly excessive and exorbitant and there is a delay in reporting the alleged accident to the police and the petitioner has to prove that the accident occurred due to the rash and negligent driving of the van.

6. The Tribunal after considering the evidence of P.Ws.1 and 2 and the documents Exs.A.1 to A.29 marked on behalf of the petitioner and Ex.B.1

marked on behalf of the 2nd respondent-insurer, though assessed compensation payable to the appellant-petitioner as Rs.31,000/-, granted Rs.26,000/- by deducting Rs.5,000/- therefrom holding that the appellant-petitioner also contributed for occurrence of the accident, as he was not holding driving licence to drive the motorcycle. Challenging the said order, the petitioner preferred this appeal claiming enhancement of compensation.

7. Learned counsel for the appellant-petitioner would submit that the petitioner suffered grievous injuries; the Tribunal granted meagre amount of compensation; and ultimately, prayed to enhance the compensation as prayed for.

8. In view of the contentions raised on behalf of appellant-petitioner, the point for determination is, whether the petitioner is entitled for enhancement of compensation?

9. **POINT:** To substantiate the case, the petitioner deposed as P.W.1 and also examined the doctor as P.W.2 and got exhibited Exs.A.1 to A.29. Ex.A.1 is the copy of F.I.R., Ex.A.2 is the copy of charge sheet, Ex.A.3 is the copy of panchanama, Ex.A.4 is the copy of injury certificate, Exs.A.5 to A.7 are the OP tickets, Ex.A.8 is the X-ray, Ex.A.9 is the prescription, Exs.A.10 to A.26 are the medical bills, Ex.A.27 is the insurance policy, Ex.A.28 is the RC book and Ex.A.29 is the medical certificate. The Tribunal while examining the injuries suffered by the petitioner had elaborately discussed the injuries and relying on Ex.A.4-copy of injury certificate and also oral evidence of P.Ws.1 and 2 and ultimately, held that there was no fracture. However, considering that the petitioner suffered avulsion of left ear and he sustained one contusion on the left side of the skull, granted a sum of Rs.10,000/- for avulsion of left ear and Rs.3,000/- for contusion on the left side of the skull. The Tribunal had also granted an amount of Rs.5,000/- for pain and suffering, Rs.3,000/- towards

medical expenses and Rs.5,000/- towards loss of income. The assessment made by the Tribunal is based on the evidence on record.

10. The Tribunal held that in view of the fact that the petitioner did not file his valid driving licence, he attributed contribution for occurrence of the accident and accordingly, deducted Rs.5,000/- from the total compensation assessed, i.e., Rs.31,000/- (minus) Rs.5,000/-, and awarded Rs.26,000/- with interest at 9% per annum from the date of petition till date of deposit. As per the evidence of P.W.1 and the documents referred above, the accident occurred due to rash and negligent driving of the driver of the jeep bearing registration No.MH 26C 4761. Even the jeep driver was not examined nor any other witnesses were examined to rebut the evidence of P.W.1. Under these circumstances, in the absence of any such evidence, the Tribunal ought not have deducted Rs.5,000/- stating that the petitioner contributed for occurrence of the accident. Therefore, the petitioner is entitled to a total compensation of Rs.31,000/- assessed by the Tribunal with interest at 9% per annum from the date of petition till date of deposit.

11. In the result, this appeal is partly allowed and the order dated 03.08.2004 passed in O.P. No.233 of 2000 on the file of the Chairman, Motor Accident Claims Tribunal-cum-I Additional District Judge, Nizamabad, is modified and the amount of compensation of Rs.26,000/- granted by the Tribunal is enhanced to Rs.31,000/- with interest at 9% per annum from the date of petition till date of deposit.

12. Miscellaneous Petitions pending, if any, shall stand closed. There shall be no order as to costs.

Dr. SHAMEEM AKTHER, J

Date: 12.06.2018
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